

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

MISC. CIVIL APPLICATION (TR.) NO.186 OF 2023

Sau. Poonam w/o Tushar Nile

Vs.

Tushar s/o Rambhao Nile

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Anzar Baig Mirza, Advocate for applicant.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 19/04/2023

1. Present application is filed for seeking transfer of Hindu Marriage Petition No.264/2022 pending before the Civil Judge Senior Division, Khamgaon to Civil Judge Senior Division, Akot.

2. As per contention of the applicant, she is legally wedded wife of the non-applicant and their marriage was performed on 02.07.2021. The applicant is a qualified lady as she has completed Master of Technology and serving in a multinational company at Hyderabad. After marriage, though she resumed cohabitation, however she was subjected for the ill-treatment and, therefore, she constrained to leave matrimonial house. She had filed the proceeding under the provisions of Protection of Women From Domestic Violence Act, 2005 before the learned Civil Judge Junior Division Court, Akot. She had also filed Misc. Application No.472/2022 against the present non-

applicant and others. Thus, two proceedings are already pending in the Court of Akot. Now the non-applicant has filed the petition under Section 9 of the Hindu Marriage Act bearing No.264/2022 before the Civil Judge Senior Division, Khamgaon. It is contended by the applicant that as applicant is serving at Hyderabad, it is difficult for her to come to Akot and, thereafter, to attend the proceeding at Khamgaon. As two proceedings are already pending at Akot, it would be convenient for her to attend the proceeding in one Court i.e. at Akot and prayed for transfer of the matrimonial proceeding filed by the non-applicant.

3. The said application is strongly opposed by the non-applicant by filing reply on the ground that the application is filed on the baseless ground. In fact, it was the applicant who ill-treated him and left his company therefore, he filed application under Section 9 of Hindu Marriage Act for restitution of conjugal rights. It is further contended by the non-applicant that the distance between the Akot to Khamgaon is more than 74 km. However, Khamgaon is Tahsil place and it is not at all inconvenient place for the applicant. He submitted that only to harass the non-applicant, this application is filed and hence application deserves to be rejected.

4. Heard learned Advocate Mr. Mirza, for the applicant. He submitted that the applicant is already serving at Hyderabad is an admitted position. Two proceedings are already pending in the Court of Civil

Judge Junior Division, Akot. Non-applicant is already attending the said proceedings, therefore no prejudice will be caused to him, if he attends the proceeding at Akot. If applicant has to attend the proceeding at Khamgaon, she has to first come at Akot and, therefore, to travel from Akot to Khamgaon to attend the proceeding which is most inconvenient for the applicant. He further submitted that in view of the recent judgment of the Hon'ble Apex Court the convenience of the applicant – wife is the paramount consideration and hence, in view of that, applicant is entitled to receive the relief claimed by her in the application. In support of his contention he placed reliance on **N.C.V. Aishwarya Vs. A. S. Sarvana Karthik Sha reported in 2022 LiveLaw (SC) 627** wherein it is held that:

“9. The cardinal principle for exercise of power under Section 24 of the Code of Civil Procedure is that the ends of justice should demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of both the parties, the social strata of the spouses and their behavioural pattern, their standard of life prior to the marriage and subsequent thereto and the circumstances of both the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Given the prevailing socioeconomic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer.”

5. As noticed above, the applicant who is

serving at Hyderabad attending the proceeding at Akot, considering the facts and circumstances that applicant has to travel from Hyderabad to Akot and then Akot to Khamgaon which is most inconvenient for her.

6. In view of that, the application deserves to be allowed. Moreover, one proceeding is already pending in the Akot Court wherein the non-applicant has already put his appearance, so prejudiced will be caused to him. In view of that, application deserves to be allowed. Hence I proceed to pass the following order.

7. The application is allowed.

8. The Hindu Marriage Petition No.264/2022 pending in the Court of Civil Judge Senior Division Khamgaon be transferred to Civil Judge Senior Division, Akot, for adjudication.

9. The Civil Judge Senior Division, Khamgaon shall send the record and proceeding to the Civil Judge Senior Division, Akot, for adjudication.

10. The parties to appear before the Civil Judge Senior Division, Akot on 13.06.2023.

(URMILA JOSHI-PHALKE, J.)

Sarkate